

APPEAL, MARIN, DsclsDue, DebtEd

**U.S. Bankruptcy Court
California Northern Bankruptcy Court (San Francisco)
Bankruptcy Petition #: 20-30242**

Assigned to: Judge Hannah L. Blumenstiel
Chapter 11
Voluntary
Asset

Date filed: 03/04/2020
Plan confirmed: 05/02/2022
341 meeting: 05/15/2020
Deadline for filing claims: 07/06/2020
Deadline for objecting to discharge: 06/08/2020

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Filing Date	#	Docket Text
05/18/2022	<u>1089</u>	Statement of Issues on Appeal, <i>California Franchise Tax Board's Statement of Issues and Designation of Record on Appeal</i> (RE: related document(s) <u>1036</u> Notice of Appeal and Statement of Election filed by Creditor California Franchise Tax Board). Filed by Creditor California Franchise Tax Board (Porter, Cara). NOTE: Additional event code not selected. Modified on 5/19/2022 (lea). (Entered: 05/18/2022)
05/31/2022	<u>1098</u>	Statement of Issues on Appeal, <i>Debtors Statement of Issues and Counterdesignation of Record on Appeal</i> (RE: related document(s) <u>1089</u> Statement of Issues on Appeal filed by Creditor California Franchise Tax Board). Filed by Debtor Anthony Scott Levandowski (Brar, Danisha). Related document(s) Related document(s) <u>1036</u> Notice of Appeal and Statement of Election filed by Creditor California Franchise Tax Board. CORRECTIVE ENTRY: Clerk added linkage to document # 1036. DEFECTIVE ENTRY : Additional event code not selected. Modified on 6/1/2022 (pw). (Entered: 05/31/2022)

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IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

In re:

ANTHONY SCOTT LEVANDOWSKI,

Debtor.

CASE NO. 20-30242 HLB

Chapter 11

**CALIFORNIA FRANCHISE TAX
 BOARD'S STATEMENT OF ISSUES
 AND DESIGNATION OF RECORD ON
 APPEAL**

[Re **Dkt. No. 1036**]

Creditor and Appellant California Franchise Tax Board ("FTB"), pursuant to
 Rule 8009(a)(1) of the Federal Rules of Bankruptcy Procedure, hereby submits its designation of
 the items to be included in the record on appeal and a statement of the issues to be presented for
 Case No. 4:22-cv-02789-YGR, pending before the United States District Court for the Northern
 District of California.

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I. ISSUES ON APPEAL

FTB presents the following issues on appeal:

1. May a Bankruptcy Court make a determination under 11 U.S.C. § 505(a) concerning a debtor's tax liability for a payment not yet made, in a tax period that has not concluded?
2. Is a determination under 11 U.S.C. § 505 of the potential tax effects of a proposed plan of reorganization prior to confirmation of the plan of reorganization an impermissible advisory opinion?
3. Did the Bankruptcy Court err in concluding that a third party's agreement to indemnify a taxpayer for actions the taxpayer performed prior to entering into the indemnification agreement constituted insurance?
4. Did the Bankruptcy Court err in failing to categorize portions, or the entirety, of a third party's settlement payment on behalf of a taxpayer it indemnified as between categories of taxable or non-taxable events?
5. Did the Bankruptcy Court err in failing to analyze all potential, colorable tax effects presented for a settlement payment made on a taxpayer's behalf to a third party when the court determined the amount or legality of tax under 11 U.S.C. § 505?

II. DESIGNATION OF THE RECORD¹

FTB hereby incorporates the documents identified in *United States' Statement of Issues on Appeal and Designation of Record on Appeal (Notice of Appeal ECF No. 1034)* [Dkt. 1086] and *United States' Statement of Issues on Appeal and Designation of Record on Appeal (Notice of Appeal ECF No. 1035)* [Dkt. 1086] as if set forth fully herein.² Additionally, FTB designates the following documents:

¹ FTB's Designation of the Record here is identical to FTB's Designation of the Record in FTB's Appeal of the Confirmation Order [USDC Case No. 4:22-cv-02786-YGR], arising from the same underlying bankruptcy case: *In re Levandowski*, USBC Case No. 20-30242 HLB.

² The United States designated the identical documents in Docket No. 1086 and Docket No. 1087. While FTB does not anticipate using all of the documents the United States designated, FTB incorporates the entirety of the United States' designation for ease of the clerk's compilation of documents and because FTB intends to file a motion for the district court to jointly administer the four appeals.

<u>Bankruptcy Docket No.</u>	<u>Date Entered</u>	<u>Description</u>
	02/10/2022	Docket Text Order (no separate order issued)
836	02/10/2022	Proposed Redacted Document
	03/03/2022	Docket Text Order (no separate order issued)
	03/10/2022	Docket Text Order (no separate order issued)
	03/11/2022	Docket Text Order (no separate order issued)
904	03/15/2022	Sealed Transcript Regarding Hearing Held 3/11/2022
922	03/21/2022	Uber's Notice Regarding / Notice of Intent to Request Transcript Redaction of March 3, 2022 Hearing
923	03/21/2022	Uber's Notice Regarding / Notice of Intent to Request Transcript Redaction of March 10, 2022 Hearing
934	03/29/2022	Sealed Redacted Transcript Regarding Hearing Held 3/10/2022
936	03/29/2022	Sealed Redacted Transcript Regarding Hearing Held 3/3/2022
954	04/01/2022	PDF with Audio File Attached from Hearing Held on 03/31/2022 at 9:00 AM
1023	04/22/2022	PDF with Audio File Attached from Hearing Held on 04/22/2022 ³ at 11:00 AM
1038	05/04/2022	Uber's Notice of Intent to Request Transcript Redaction of April 21, 2022 Hearing

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³ The Court's docket and the document itself reflect the hearing date of April 22, 2022. However, the recording documents the hearing that occurred on April 21, 2022.

FTB also identifies as part of the record on appeal the unredacted *Motion to (I) Determine Tax Effect of Settlement Payment or, in the Alternative, (II) Find the Debtors Plan Feasible without Reserving for Taxes Thereon (IRS/FTB)* and all the exhibits that were served on FTB pursuant to the Bankruptcy Court's text order dated 3/21/2022.

Dated: May 18, 2022

Respectfully submitted,

ROB BONTA
Attorney General of California
MICHAEL D. GOWE
Supervising Deputy Attorney General

/s/ Cara M. Porter
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Deputy Attorney General
Attorneys for Creditor and Appellant
California Franchise Tax Board

CERTIFICATE OF SERVICE

Case Name: **In re:** **ANTHONY SCOTT** No. **20-30242 HLB**
LEVANDOWSKI

I hereby certify that on May 18, 2022, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

- **CALIFORNIA FRANCHISE TAX BOARD'S STATEMENT OF ISSUES AND DESIGNATION OF RECORD ON APPEAL**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on May 18, 2022, at San Francisco, California.

Rachel Patu
 Declarant


 Signature

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 43226149.docx

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:

ANTHONY SCOTT LEVANDOWSKI,
Debtor.

Bankruptcy Case No. 20-30242 (HLB)

Chapter 11

**DEBTOR'S STATEMENT OF ISSUES
AND COUNTERDESIGNATION OF
RECORD ON APPEAL**

[Dkt. Nos. 1036; 1089]

Anthony Scott Levandowski, as debtor and debtor in possession (the "Debtor") in the above-captioned chapter 11 case (the "Chapter 11 Case") respectfully submits its counterdesignation to the statement filed by the Franchise Tax Board (the "FTB") [Dkt. No. 1089] of items to be included in the record on appeal and a statement of issues to be presented for Case No. 4:22-cv-02789-YGR, pending before the United States District Court for the Northern District of California.

Statement of Issues

In addition to the issues presented by the FTB, the Debtor presents the following additional items:

- 1 ■ Did the United States Bankruptcy Court for the Northern District of California (San
 2 Francisco Division), the Honorable Hannah Blumenstiel presiding (the “Bankruptcy
 3 Court”), have the authority to issue its *Order Granting Debtor’s Motion to (I)*
 4 *Determine Tax Effect of Settlement Payment or (II) Find the Debtors Plan Feasible*
 5 *Without Reserving for Tax Thereon* [Docket No. 1034]?
 6 ■ Did the Bankruptcy Court abuse its discretion in concluding that a payment made by
 7 an indemnitor directly to a third party was not taxable to the indemnitee?

8 **Counterdesignation of the Record**

9 In addition to the items designated by the FTB, the Debtor designates the following
 10 documents:

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<u>Dkt. No.</u>	<u>Date Filed</u>	<u>Name of Pleading</u>
895	03/15/2022	(SEALED) Transcript Regarding Hearing Held 3/3/2022
900	03/15/2022	(SEALED) Transcript Regarding Hearing Held 3/10/2022
1004	04/15/2022	Notice Regarding Filing of Supplement to Debtors Combined Disclosure Statement and Chapter 11 Plan dated March 29, 2022
1018	04/20/2022	Notice Regarding Filing of Second Supplement to Debtors Combined Disclosure Statement and Chapter 11 Plan dated March 29, 2022
1019	04/20/2022	Notice Regarding Filing of Redline Release Agreement, Residual Liquidation Trust Agreement, and Confirmation Order

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 26 Dated: May 31, 2022

KELLER BENVENUTTI KIM LLP

27 By: /s/ Dara L. Silveira

28 Dara L. Silveira